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California Regional Water Quality Control Board San Diego Region

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November 16, 2007

Ms. Maureen Stapleton
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123-1233

Dear Ms. Stapleton:

**Subject: Determination of Federal Jurisdictional Waters And Assessment Of
Mandatory Minimum Penalties For Effluent Violations contained in
NPDES permits**

**Site: San Vicente Pipeline Project dewatering discharge in Slaughterhouse
Canyon.**

The Regional Board has reviewed your submittal regarding the total nitrogen violations associated with the San Vicente Pipeline Project dewatering discharge in Slaughterhouse Canyon. As you know, violations of effluent limitations contained in NPDES permits, including these total nitrogen violations, are subject to Mandatory Minimum Penalties (MMP) in accordance with Water Code Section 13385.

During the enrollment in the Regional Board's extraction NPDES permit in November 2005, the Water Authority accepted the designation that this portion of Slaughterhouse Creek, a tributary to the San Diego River, was waters of the United States and that discharges to the Slaughterhouse Creek would be subject to NPDES permit conditions including effluent limitations which are subject to MMPs.

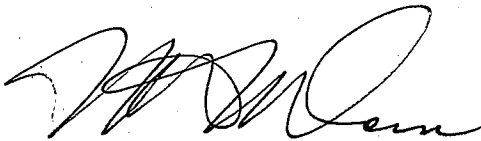
We understand that the Water Authority, after submittal of monitoring reports that identified some 40 effluent violations that occurred in mid-2006 and which were worth approximately \$120,000 in mandatory minimum penalties, has now challenged the previously accepted determination that these receiving waters are waters of the United States and therefore not subject to the NPDES permit requirements. If correct and this section of Slaughterhouse Creek is determined not be waters of the United States, the effluent violations would not be subject to MMP although the possibility of discretionary liability remains. Apparently, this consideration by the Water Authority is based on a recent Supreme Court decision whose effect will likely reduce the extent of what were once considered waters of the United States.

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Until the issue of jurisdiction is resolved, the Regional Board is willing to postpone consideration of assessment of mandatory penalties or discretionary liability for these effluent violations in question to allow reasonable opportunity for the Water Authority to obtain a jurisdictional determination from the Army Corps of Engineers. If the Water Authority can obtain a determination indicating that Slaughterhouse Creek in this area is no longer under the jurisdiction of the Clean Water Act, it would appear to be appropriate for the Regional Board to withdraw any consideration of mandatory penalties based on the effluent limitations in the NPDES permit. If, however, if the receiving water is determined to still be jurisdictional, then I intend to pursue the assessment of penalties for all reported effluent limitation violations. If a jurisdictional determination cannot be obtained by May 15, 2008, the Regional Board will assume the discharge was to waters of the United States under the jurisdiction of the Clean Water Act and proceed with the assessment of MMP.

Please contact Rebecca Stewart at (858) 467-2966 or via e-mail at Rstewart@waterboards.ca.gov if you have any questions concerning this matter.

Respectfully,



MICHAEL P. McCANN
Assistant Executive Officer

MPM:mja:rls

cc: Ken Weinberg, San Diego County Water Authority, 4677 Overland Avenue, San Diego, CA, 92123-1233

Larry Purcell, San Diego County Water Authority, 4677 Overland Avenue, San Diego, CA 92123-1233

Mike Jatczak, Project Manager, Traylor/Shea Joint Venture, 12393 Moreno Ave., Lakeside, CA 92040

Michael R. Welch, Ph.D., P.E., Consulting Engineer, 2735 San Clemente Terrace, San Diego, CA 92122-4030